IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.754 OF 2006

Godrej & Boyce Manufacturing Company Limited
a company incorporated under the provisions of
the Companies Act, 1956 and having its office
at Pirojsha Nagar, Vikhroli,
Mumbai 400 079. ..Petitioner.

Vs.

Suhas Hari Bhalerao
4/178, "Shivneri",
Dadasaheb Phalke Marg, Dadar,
Mumbai 400 014. ..Respondent.

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Mr. Ankit Mehta i/b M/s. Haresh Mehta & Co. for the Petitioner.
Mr. P.M. Mokashi for the Respondent.

...

WITH

WRIT PETITION NO.833 OF 2006

Suhas Hari Bhalerao
4/178, "Shivneri",
Dadasaheb Phalke Marg, Dadar,
Mumbai 400 014. ..Petitioner.

Vs.

Godrej & Boyce Manufacturing Company Limited
Pirojsha Nagar, Vikhroli,
Mumbai 400 079. ..Respondent.

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Mr. P.M. Mokashi for the Petitioner.
Mr. Ankit Mehta i/b M/s. Haresh Mehta & Co. for the Respondent.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

22nd February, 2007.

ORAL JUDGMENT :

1. On a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 the Labour Court, by its Part I award dated 25th September, 2003 held that the disciplinary enquiry was fair and proper but, that the finding of misconduct was perverse. The management thereupon adduced evidence in support of the charge of misconduct. The Labour Court by its award dated 19th July, 2005 came to the conclusion that the charge of misconduct was established on the basis of the evidence on the record and that the charge was serious in nature. Nonetheless the Labour Court granted reinstatement with continuity of service, though without backwages by its award dated 19th July, 2005.

2. Both the workman and the management are in these proceedings under Article 226 of the Constitution to challenge the award of the Labour Court.

3. The workman was initially employed with the management with effect from 9th January, 1978 as a checker / inspector in the Die-casting Department. Subsequently, the workman was assigned to carry out inspection duties. Some time in the year 1983-84 the workman had developed back pain and in

pursuance of his request the management assigned him to carry out work in the Dog Rocker Assembly line. On 20th November, 1985 a letter of warning was addressed to the workman informing him that while working on the Dog Rocker Assembly stage in the Pre-Assembly department, the workman had not been able to fulfill the normal output of the department despite the fact that several months had passed since his new posting. The management noted that the workman had on his request been assigned work of a light nature which did not involve any bending and which could be performed in a sitting position on a stool / chair with the job provided on a work table. By its communication the management stated that it would be compelled to take action according to law in the event the workman fails to achieve the required production norms.

4. On 3rd February, 1986 a charge sheet was issued to the workman by which disciplinary proceedings were convened on the allegation that between 22nd November, 1985 and 31st January, 1986 the workman had failed to give normal production, in accordance with the established norms of production which amounted to willful insubordination and /or willful slowing down of

production, or a gross neglect in the performance of his duties. The workman was informed that his persistent refusal to give normal production was an act subversive of good behaviour within the premises of the establishment and of the discipline of the establishment. A chart detailing the production efficiency of the workman for the period in question was contained in the charge sheet. The chart indicated that over the period in question the workman had rendered a production efficiency of between 49% and 64% of the required norms. The workman was charge-sheeted under Certified Standing Orders 22(1), 22(3), 22(12) and 22(13). A disciplinary enquiry was convened in which the workman participated. The Enquiry Officer held that the charges were duly proved. Thereupon the workman was dismissed from service by an order dated 22nd November, 1990.

5. Upon an industrial dispute being raised, the appropriate government made a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. The Labour Court by its Part I award dated 25th September, 2003 came to the conclusion that the enquiry was fair and proper. However, the Labour Court was of the view that the findings of the Enquiry Officer were perverse. On

behalf of the management evidence was adduced at the stage prior to the Part I award. The workman also deposed in support of his case. After the Part I award, the management adduced evidence in support of the charge of misconduct, of two witnesses. The first witness was Shri Mohmed Hanif Shaikh, who was the supervisor in the typewriter plant and to whom the workman was reporting in the Pre-Assembly Department. The second witness who deposed in support of the case of the management was a co-worker, Domnic Rodrigues. The Labour Court on the basis of the evidence which was adduced by the management came to the conclusion that the charge of misconduct was established. The Labour Court came to the conclusion, on the basis of the evidence that under the production norms that were stipulated by the management, the workman was to fulfill a requirement of 78 assemblies, which he had consistently failed to achieve despite a cautionary warning dated 20th November, 1985. Subsequently though there was a settlement dated 10th March, 1985 by which the existing norms were increased to the extent of 15%, the workman had not consented thereto and hence the requirement which he was due to fulfill was that of 78 assemblies as originally stipulated. The Labour Court held that the job cards of the

workman which were produced on the record clearly provided an output requirement of 78 assemblies. The Labour Court therefore found no substance in the contention of the workman that the norm of 78 assemblies had not been communicated to him. In these circumstances, the Labour Court was of the view that though the workman had been assigned to a particular job on his own request, he had been consistently unable to meet the output requirement despite a caution issued by the management. The conduct of the workman was held to be amounting to willful insubordination, willful slowing down in the performance of the work and the commission of an act subversive of good behaviour within the premises of the establishment. The Labour Court held that this was a serious act of misconduct. Nonetheless, the Court came to the conclusion that in exercise of its powers under Section 11-A of the Industrial Disputes Act, 1947 the award of a lesser punishment was required having regard to various mitigating circumstances. An order of reinstatement was accordingly passed though without backwages.

6. In the petition that has been filed by the workman (Writ petition 833 of 2006) in order to impugn the award of the Labour

Court, it has been urged that at the initial stage, when the fairness of the enquiry and perversity of findings were to be considered by the Labour Court, the management as well as the workman had adduced evidence. The evidence so adduced, it was submitted, related to both the fairness of the enquiry and the charge of misconduct. The learned counsel submitted that the production norms came to be filed on the record only when evidence was adduced by the management after the Part I award when the management availed of the opportunity of substantiating the charge of misconduct before the Labour Court. In these circumstances, it was submitted that the Labour Court ought to have considered the evidence of the management on merits even at the Part I stage where initially the output norms had not been produced and an adverse inference should have been drawn. Secondly it was sought to be submitted that the norms which were filed on the record when evidence was adduced by the management after the Part I award stage was over would not show that the required norm of 78 assemblies was expected to be maintained by the workman. Thirdly it was submitted that the management had not produced any data relating to the actual work output of other workmen in the same department.

7. In considering the tenability of the aforesaid challenge that has been urged on behalf of the workman, it must be reiterated that ordinarily it is for the disciplinary authority, in an enquiry into a charge of misconduct to determine as to whether the charge has been established on the basis of the evidence on the record. The charge of misconduct has to be established on a preponderance of probabilities. Where the enquiry has been held to be vitiated or in a situation where no enquiry has been held, it is now a well settled principle of law that it is open to the management to seek an opportunity of establishing the charge of misconduct independently before the Labour Court. In the present case, the enquiry was held to be fair and proper, but the Labour Court in the course of the Part ?I award had held that the findings of the enquiry suffer from a perversity. The management thereupon adduced evidence in support of the charge of misconduct. The first witness who deposed on behalf of the management was Mohmed Hanif Shaikh, who was employed as a supervisor in the typewriter plant and to whom the workman was reporting. At the material time when the workman was transferred to the Pre-Assembly Department, he was reporting to the witness. This aspect is not controverted. Exhibit

C-34 were the output norms which were proved through the witness. The witness explained how the output norms were calculated with reference to the operations that were involved in the Dog Rocker B Assembly. The witness deposed as follows :

> "I say that the combined norms for the Dog Rocker 'B' Assembly and other operations mentioned hereinabove, are fixed in a systematic and scientific manner based on 390 minutes (six and a half hours) working cycle for an 8 hours shift, excluding 30 minutes given for lunch recess. It is pertinent to mention that the working cycle for the 8 hours shift for this stage, includes 360 minutes (six hours) of actual time for operations and average 30 minutes (half an hour) for repairs, on the basis of which the norms were liberally fixed. The balance time of 90 minutes (one and a half hours) was for breakfast, going to wash-room, tea-break, etc."

8. After furnishing a break up of the time allocated to each of the operations, the witness deposed that 78 completed Dog Rocker B assemblies were required to be produced defect free per shift :

> "I say that 4.6306818 minutes (0.3125 + 0.2556818 + 0.3125 + 3.75) are required to make on Dog Rocker 'B' Assembly. On this basis, I, therefore say that for 360 minutes (six hours) the output would be 77.742331 Dog Rocker 'B' Assemblies (i.e. 360/4.6306818 = 77.742331)

rounded off to 78 complete Dog Rocker 'B' Assemblies.

I, therefore, say that in an eight hour shift, a workman was required to give the established production/ output of 78 complete defect-free Dog Rocker Assemblies per shift, prevailing prior to the 1985 Settlement."

9. The other witness who deposed in support of the case of the management was Domnic Rodrigues who was also a co-worker. The witness stated that in the year 1985-86 he was also working on the same stage in the Pre-Assembly Department of the typewriter plant. The evidence of the witness was that in the Dog Rocker Assembly stage certain norms of output were required to be observed by the workman in every shift. The workman stated that the norms which were filed at Exh. C-34 were the very norms which were required to be observed. During the course of the cross examination of the management's first witness a reference was made by the witness to the job cards (pages 2 to 59 of Exh. C-12) pertaining to the workman involved in the proceedings in the present case. As the Labour Court noted, the job cards contained a stipulation of 78 assemblies, being the required output.

10. In these circumstances, on the basis of the aforesaid

evidence, the Labour Court came to the conclusion that the finding of misconduct was duly proved. The management's case was that despite a cautionary warning on 22nd November, 1985, the workman had persisted in failing to fulfill the required production norms. After the management had adduced evidence in support of the charge of misconduct before the Labour Court, the workman chose not to step into the witness box at all having rested content with the evidence which had been adduced at the Part I stage. Even if, as counsel appearing for the workman submits, the evidence of the workman at the Part I stage is taken into account, it cannot be said that the workman had displaced the burden which had shifted upon him after the management had satisfactorily established the charge of misconduct before the Labour Court. The Labour Court held that it was upon the request of the workman himself that he should be assigned a light job that the management had transferred him to the Pre-Assembly Department. The allegation of the workman to the effect that he was charge-sheeted because he had pointed out various defects in the typewriters was held to be unproved. In a matter such as the present, in the very nature of things this Court would be transgressing the limitations which govern proceedings under

Article 226 by substituting its own appreciation of evidence for the appreciation of evidence by the Labour Court. The submission that the output norms were filed for the first time when the management chose to adduce evidence before the Labour Court in support of the charge of misconduct cannot be a circumstance which in itself would vitiate the finding of the Labour Court. Ultimately the weight to be ascribed to the production norms that were produced by the management as well as the authenticity thereof were matters for evaluation by the Labour Court on the basis of the evidence on the record. The Labour Court has considered the totality of the evidence including the job cards of the workman himself which show the output norm that was required was of 78 assemblies. At this stage, it would neither be appropriate nor proper for the Court to re-evaluate the appreciation of the evidence by the Labour Court. Having regard to the evidence which has been discussed earlier, it cannot be said that the present case belongs to that category where the finding of misconduct can be assailed as being based on no evidence at all. The Petition filed by the workman must, therefore, fail.

11. Insofar as the Petition filed by the management is

concerned, the contention that has been urged before the Court is that on the charge of misconduct having been held to be established and the Labour Court having come to the conclusion that the charge was serious, it was manifestly inappropriate for that Court to interfere with the punishment of dismissal. The submission that has been urged on behalf of the management is well founded and will have to be accepted. In the present case the charge of misconduct which is found to be established involves a slowing down of production, willful insubordination and the commission of an act subversive of the discipline. In a matter involving a serious charge of misconduct, it is manifestly inappropriate for the Labour Court to interfere. The Labour Court seems to have formed the view that in the exercise of its jurisdiction under Section 11-A the Court is vested with benevolent powers and that the Court would be justified in awarding reinstatement so as not to seriously prejudice the future career of the workman who was in his middle ages. The approach of the Labour Court suffers from a clear perversity and is manifestly contrary to the law laid down by the Supreme Court. In the recent judgment in **Hombe Gowda Educational Trust v. State of**

Karnataka[1] the Supreme Court has observed thus :

> "The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relations wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/ industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

12. Having regard to the nature of the misconduct and the seriousness and the gravity of charges, the interference of the Labour Court was clearly and manifestly inappropriate. In such a case even if the past record of the workman is otherwise free from blame, the seriousness of the misconduct will justify an order of dismissal from service. The Petition filed by the management shall accordingly have to be allowed.

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1 (2006) 1 SCC 430.

13. For the aforesaid reasons, Writ Petition 754 of 2006 filed by the management is allowed and rule is made absolute in terms of prayer clause (a) by quashing and setting aside the award of the Labour Court to the extent that the Labour Court, while interfering with the punishment imposed by the management directed the management to reinstate the workman with continuity of service.

14. Writ Petition 833 of 2006 filed by the workman shall accordingly stand dismissed. In the circumstances of the case, there shall be no order as to costs.